

# IMPORTANT Information About Your Healthcare Spending Account Plan

**The new healthcare reform legislation includes important changes to your healthcare Spending Account effective January 1, 2011.**



## Over-the-Counter Medications Requiring a Prescription after January 1, 2011

As you may know, starting January 1, 2011, over-the-counter (OTC) medicines and drugs now require a prescription to be reimbursed by a healthcare spending account. On September 3, 2010, the IRS provided clarification<sup>1</sup> that an OTC drug is considered prescribed for purposes of the new rule if the individual obtains a “prescription” for such medicine or drug. This ruling applies even if the medicine or drug may also be purchased without a prescription. A prescription is defined as an electronic or written order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual authorized to issue a prescription in that state.

**In accordance with the IRS guidelines, SHPS will make several changes to the reimbursement of OTC medicines effective January 1, 2011. These changes will impact all employer-provided plans, including health flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs):**

- Expenses incurred after December 31, 2010 for over-the-counter medicines and drugs will require a prescription to be reimbursed.
- The only acceptable supporting documentation for over-the counter medicines and drugs will be a pharmacy receipt showing the name of the person for whom the prescription applies, the date and amount of the purchase, and a prescription number. See page 4 for a sample. These requirements are identical to those that would apply for any other prescribed drug submitted for reimbursement to an FSA or HRA.
- Claims for reimbursement of expenses incurred after December 31, 2010 for over-the-counter medicines and drugs without a prescription will be denied.
- Restrictions on reimbursements apply to all OTC medicines and drugs purchased beginning January 1, 2011, including those purchased with funds available from prior plan years, such as during a grace period.
- These restrictions do not apply to other types of medical care expenses, such as medical equipment or supplies, or to insulin.

Employers have until June 30, 2011 to amend their plans to reflect the new OTC restrictions. SHPS will be ready to implement the new OTC prescription requirements before the January 1, 2011 effective date. An updated Eligible Expense Guide is available for review that reflects the new OTC rules.

Included below are some of the most frequently asked questions about the new OTC rules and how they may impact your spending account plan.



# OTC FAQs

## **Q When does the prescription requirement for OTC medicines go into effect?**

**A** A prescription will be required for reimbursement of all medicines and drugs, except insulin, beginning January 1, 2011. This prescription requirement applies even if the medicine or drug is available for purchase over the counter.

## **Q What exactly is meant by a “prescription”?**

**A** A “prescription” means a written or electronic order for a medicine or drug that meets the legal requirements of a prescription in the state in which the medical expense is incurred and that is issued by an individual who is legally authorized to issue a prescription in that state. In other words, a prescription for an over-the-counter medicine or drug contains the same information as a prescription for a prescription-only medicine.

## **Q My spending account plan runs on a non-calendar-year basis. Will the January 1, 2011 effective date still apply to my plan?**

**A** The OTC regulations are based on “tax” years versus “plan” years. A tax year runs from January 1 through December 31. This distinction means that the change applies to all healthcare spending accounts, regardless of the plan year effective date. For example, if your plan year runs from May 1, 2010 through April 2011, any expenses you incur for OTC medications beginning on January 1, 2011 or thereafter will require a prescription, even though your plan year extends to April.

## **Q Will I be able to change my current spending account election amount prior to the January 1 date?**

**A** No. The IRS guidelines do not permit a change in election amounts due to the change in OTC reimbursement rules. Any change in your contribution amount must occur during open enrollment, unless a qualifying event occurs which permits an election change in accordance with your employer’s plan.<sup>2</sup>

For example, if you elected \$2,000 on May 1, 2010, anticipating you would be able to purchase OTC medications without a prescription through April 30, 2011, you will not be permitted to adjust this election amount until your next enrollment period (May 1, 2011).

This does not mean, though, that OTC medicines and drugs will no longer be considered eligible for reimbursement. Claims for OTC medicines and drugs will require submission of the pharmacy prescription receipt along with the claim form. The receipt must include the name of the person for whom the prescription applies, the date and amount of the purchase, and an Rx number. Eligibility for payment will be determined in accordance with IRS requirements and applicable plan provisions, after the expense has been submitted for reimbursement.

## **Q If I purchase an OTC item during the 2011 grace period using funds from my 2010 account, will I still be required to submit a prescription or letter of medical necessity?**

**A** A calendar-year plan grace period permits expenses incurred between 1/1/2011 and 3/15/2011 to be reimbursed from remaining funds from 2010. OTC medicines and drugs purchased in 2011 cannot be reimbursed from any account without a prescription, regardless of plan year or grace period.

## OTC FAQs

**Q How often will I need to submit a prescription for an OTC medicine or drug in order for the claim to be considered for reimbursement under the plan?**

**A** A copy of the pharmacy prescription receipt must be submitted with your claim form each time reimbursement is requested.

**Q I have been diagnosed with diabetes. Will I be required to submit a prescription in order to purchase my insulin?**

**A** No. Under the regulations, a prescription is not required to purchase insulin, even though it is available over the counter.

**Q What about over-the-counter medical supplies, such as bandages or medical tape; will those items still be eligible, even without a prescription?**

**A** The OTC restrictions apply only to medicines or drugs. Medical supplies such as Band-Aids®, medical tape, ACE™ bandages or items such as diabetic test strips or contact lens solution do not require a prescription.

**Q What impact will health care reform have on reimbursement benefits for expenses relating to doctor's office co-pays, dental co-pays, eye exams, and co-pays for regular prescriptions, such as prescription medication to treat insomnia?**

**A** The new restrictions have no impact on spending account reimbursement for other eligible medical expenses such as co-payments, deductibles, or out-of-pocket amounts not covered by your health insurance plan.

**Q If my plan issues a debit card for use in paying for healthcare expenses, can I still use my debit card to purchase OTC medicines or drugs?**

**A** Effective January 1, 2011, your debit card can no longer be used to purchase OTC medicines and drugs requiring a prescription. Examples of medicines and drugs which will now require a prescription include allergy prevention and treatment, analgesics, antacids, antibiotics, antihistamines, cold and flu remedies, migraine relief, skin care, and sleeping aids. You may refer to the 2011 Eligible Expense Guide for a more detailed list of OTC items which may now require a prescription.

**Q How will the OTC restrictions impact my 2011 spending account election amount?**

**A** During the open enrollment period for the upcoming 2011 plan year, you should carefully estimate the amount you elect to contribute under your health FSA plan. Once the plan year begins, you will not be permitted to change the elected amount unless you experience a major life event which permits an election change to occur (events such as marriage, divorce, birth, adoption, or when a child reach the plan's age limit). Keep in mind that OTC medicines and drugs can still be reimbursed through your spending account plan, as long as they are supported by a prescription. There will be no difference in the reimbursement of OTC medicines and drugs with a prescription than reimbursement of any other prescribed drugs under your plan.

# Sample documentation

SAMPLE OF AN **ACCEPTABLE**  
RECEIPT FOR REIMBURSEMENT  
MUST INCLUDE:

- Patient's name
- Date of and amount of purchase
- Prescription number

<b>ABC PHARMACY</b> #K1000 Phone 800-123-4567 123 Main Street Anytown, USA 67890		<b>Rx # 1234567 00</b>
PATIENT NAME: <b>DOE, JOHN E.</b>		CUSTOMER RECEIPT Date: 1-5-11 Pay: \$ 26.71
DR. MARK SMITH, PhD 00000XXXXX <b>XYZ MEDICINE 250MG</b> <b>TAKE 1 CAPSULE BY MOUTH 2 TIMES DAILY UNTIL GONE</b> QTY: 20 Days Supply: 10 Refills: 1		
REFILLABLE 1 TIME BEFORE EXPIRATION OF 1-5-12 Return this slip for refill after 1-25-10		

SAMPLE OF AN **UNACCEPTABLE**  
RECEIPT FOR REIMBURSEMENT

<b>DR. MARK SMITH, PhD</b> 123 Main Street   Anytown, USA 67890   800-123-4567		<b>Rx</b>
Patient:	<i>John E. Doe</i>	
Prescription:	<i>XYZ Medicine</i> <i>250mg - 10 caps 2x daily</i>	
Physician:	<i>MSmith, MD</i>	